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An analysis of the human rights of transgender: Legal recognition and challenges

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Abstract

This research investigates the evolving legal status of transgender individuals in India through the lens of human rights. We meticulously analyze the constitutional protections, legislative amendments, judicial decisions, and socio-legal challenges encountered by transgender individuals. The focus is on India's advancements in promoting the principles of equality, dignity, and non-discrimination for the transgender community, in alignment with both national and international human rights standards. Transgender individuals have historically encountered marginalization and violations of their human rights on a global scale, particularly within conservative societies. In the context of India, not with standing constitutional protections and a progressive ruling in the case of *National Legal Services Authority v. Union of India* (2014) ^[1], the transgender population persists in experiencing systemic discrimination, insufficient access to healthcare, a dearth of educational and employment opportunities, and pervasive violence. This scholarly article investigates the historical development of transgender rights in India, scrutinizes the Transgender Persons (Protection of Rights) Act, 2019, ^[2] assesses its efficacy, and proffers recommendations aimed at achieving substantive equality. The article posits that legal recognition ought to be augmented by societal acceptance, comprehensive anti-discrimination legislation, and inclusive policies to ensure the protection of the human rights of transgender individuals.

Keywords: NALSA, transgender, human rights, discrimination, gender identity, legal recognition, India

Introduction

Gender identity represents a crucial component of human dignity and the principle of self-determination. Individuals who identify as transgender and whose gender identity diverges from the sex assigned at birth frequently encounter systemic forms of marginalization. The foundational premise of human rights is rooted in the principles of dignity, equality, and the prohibition of discrimination. Transgender individuals, whose gender identity is inconsistent with their assigned sex at birth, have historically endured exclusion and marginalization within mainstream societal structures. Although human rights are deemed universal and inalienable, transgender individuals frequently confront infringements upon fundamental rights, including but not limited to access to education, healthcare, employment opportunities, and protection from violence.

In recent years, numerous countries have implemented progressive initiatives, such as allowing legal gender recognition without the need for medical validation, enacting anti-discrimination legislation, and providing access to gender-affirming medical care. Nonetheless, these advancements occur alongside significant legal shortcomings, societal prejudice, and systemic obstacles. The right to self-identification is acknowledged as a fundamental human right in several international human rights documents, including the Universal Declaration of Human Rights (UDHR) ^[1], the International Covenant on Civil and Political Rights (ICCPR) ^[2], and the Yogyakarta Principles ^[3].

¹ The Universal Declaration of Human Rights (UDHR), 1948

² The International Covenant on Civil and Political Rights (ICCPR), 1966

³ The Yogyakarta Principles, 2006

India has experienced a significant legal shift regarding the rights of transgender individuals, especially following the pivotal Supreme Court ruling in *NALSA v. Union of India* [4].

Nevertheless, disconnect between legal recognition and the actual experiences of these individuals remains. The legal standing of transgender people in India involves a complicated relationship between historical societal acceptance, colonial-era criminalization, and recent legal reforms. Grasping this history is essential to understanding the continuing fight for human rights within this marginalized group. The transition from traditional acknowledgment to contemporary legal disputes highlights the substantial effects of historical changes on fundamental rights and personal dignity.

Understanding gender identity and transgender rights

Gender identity encompasses an individual's subjective perception of their own gender, which may or may not align with the sex assigned to them at birth. Individuals who are transgender may self-identify as male, female, or non-binary. International human rights frameworks, including the Yogyakarta Principles, acknowledge the significance of gender identity in the realization of human rights.

In the Indian context, the existence of a third gender has been acknowledged historically, particularly through the Hijra community; however, both legal and social recognition have been largely lacking until recent developments.

Historical and societal context of gender diversity in India

India has a profound and intricate history regarding gender diversity, traditionally recognizing a population known as the "third gender," often called Hijras or Kinnars. These individuals were historically viewed as neither male nor female, occupying a unique position within society. This acknowledgment has roots that extend back centuries, with ancient Hindu scriptures and texts, including the Vedas, explicitly recognizing individuals of 'Tritiya Prakriti' (third nature). Hindu mythology is filled with stories that highlight the acceptance and even veneration of these varied gender identities. For example, the Mahabharata includes characters such as Arjuna, who took on the transgender persona of Brihannala during the Pandavas' exile to work as a dance teacher, and Shikhandi, who is portrayed as undergoing gender transformation. Hijras, in particular, were regarded as having a deep connection to Lord Shiva in his Ardhnarishwar manifestation, a deity that embodies both male and female characteristics. They were also traditionally thought to have the ability to bestow blessings during significant events like childbirth and weddings, a practice that remains common today.

During the Mughal period, transgender individuals, notably Hijras, held prominent and respected roles within royal courts. They served as political advisors, skilled administrators, and trusted guardians of harems, often achieving high statuses due to their perceived intellect, dependability, and loyalty. Their unfettered access throughout the court allowed them to exert significant influence over state policies and to receive substantial financial remuneration, indicative of their elevated social

standing during that historical context. This historical context highlights a societal framework that, while possibly at odds with contemporary Western conceptions of gender identity, still provided a recognized and often revered space for non-binary individuals.

Legal recognition of transgender in India

Transgender rights have emerged as a significant issue within the realm of human rights, prompting considerable legal reforms globally aimed at safeguarding and acknowledging transgender individuals. This research paper deals with a comprehensive overview of the legal acknowledgment of transgender rights, focusing on key legislative measures, judicial rulings, and societal attitudes. It will examine the historical context, current legal structures, challenges faced by transgender individuals, and future opportunities for the enhancement of transgender rights. The evolution of legal recognition for transgender individuals is intricate and differs across nations and cultures. In numerous countries, transgender individuals have historically faced discrimination, stigma, and violence due to their gender identity or expression. Nevertheless, the recognition of transgender rights as a distinct legal and social concern has intensified in recent decades, leading to significant legislative and policy advancements.

Judicial Pronouncements

The Indian judiciary has consistently demonstrated a progressive stance on transgender rights, often acting as a vanguard in recognizing and affirming these rights, even ahead of legislative action. This judicial leadership is a crucial aspect of advancing human rights in India, though it also highlights a potential disconnect where legislative follow-through may not always align with the progressive spirit of judicial pronouncements.

The *NALSA v. Union of India* (2014) [5] Judgment: A Watershed Moment

The Supreme Court of India's ruling in *National Legal Services Authority (NALSA) v. Union of India* on April 15, 2014, marked a pivotal moment in the recognition of transgender rights in the country. This landmark judgment declared transgender people a "socially and economically suppressed class" and legally recognized them as a "third gender," entitled to fundamental constitutional rights.

A cornerstone of the *NALSA* judgment was its affirmation of the fundamental constitutional right of transgender people to determine their gender identity based on self-perception, explicitly stating that no sex reassignment surgery (SRS) or other medical procedures were required for this recognition. This principle was revolutionary, as it placed psychological gender identity above biological sex, ensuring that individuals could legally identify with their felt gender without intrusive medical gatekeeping.

The judgment meticulously interpreted various articles of the Indian Constitution to extend protections to transgender persons. It held that Article 14 [6], guaranteeing equality before the law, applied to "persons" and was not restricted to only males and females, thereby entitling transgender individuals to equal legal protection. Discrimination on the

⁴ *Ibid*

⁵ *Ibid*

⁶ The Constitution of India, 1950, Art.14

grounds of "sex" under Article 15^[7] (prohibiting discrimination) and Article 16 (equal opportunity in public employment) was interpreted to include discrimination based on gender identity, not just biological sex. Furthermore, the Court recognized that freedom of expression under Article 19 (1) (a)^[8] encompasses the right to express one's self-identified gender through dress, words, action, or behavior. The right to life and personal liberty under Article 21^[9] was expanded to include dignity, personal autonomy, and privacy, with gender identity being recognized as integral to one's sense of being and dignity. This comprehensive interpretation effectively brought transgender rights within the ambit of fundamental constitutional protections.

Beyond rights recognition, NALSA directed both the Union and state governments to implement affirmative action measures. This included framing welfare schemes, providing reservations in education and jobs (with a 2% reservation in government jobs proposed in a subsequent bill), and ensuring access to healthcare facilities, including separate HIV clinics and toilet facilities. The Court also called for public awareness campaigns to address stigma and social pressure faced by the community.

Significantly, the NALSA judgment also referenced international human rights jurisprudence, including the International Covenant on Civil and Political Rights (ICCPR)^[10], the International Covenant on Economic, Social and Cultural Rights (ICESCR)^[11], and the Yogyakarta Principles. The Court noted that these international instruments were consistent with the Indian Constitution, thereby reinforcing the global imperative for transgender rights. This explicit reliance on international standards solidified India's commitment to universal human rights principles.

Navtej Singh Johar v. Union of India (2018)^[12]: Decriminalization of Homosexuality:

Four years after NALSA, the Supreme Court delivered another landmark judgment in *Navtej Singh Johar v. Union of India* on September 6, 2018^[13]. The Court unanimously struck down Section 377 of the IPC, which had criminalized "carnal intercourse against the order of nature," effectively decriminalizing consensual sexual conduct between adults of the same sex. While primarily focused on homosexuality, this ruling had profound implications for transgender persons, as Section 377 of Indian Penal Code, 1860^[14] had historically been a tool for harassment, extortion, and abuse against the broader LGBTQ+ community, including transgender individuals. The judgment further affirmed the fundamental rights to privacy, dignity, and self-identity for all LGBTQ+ individuals, reiterating that discrimination based on sexual orientation violates the right to equality. The Court emphasized that "constitutional morality" must prevail over "social morality" to protect the human rights of LGBTQ+ individuals, regardless of majoritarian approval.

⁷ The Constitution of India, 1950, Art.15

⁸ The Constitution of India, 1950, Art.19 (1) (a)

⁹ The Constitution of India, 1950, Art.21

¹⁰ *Ibid*

¹¹ The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

¹² *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321

¹³ *Ibid*

¹⁴ The Indian penal Code, 1860, Sec.377

This decision built upon the NALSA framework by expanding the scope of constitutional protection to encompass sexual orientation as an integral part of self-identity and personal liberty.

KS Puttaswamy (Retd.) v. Union of India (2017)^[15]

The Supreme Court emphasized the right to privacy as a fundamental right. It was recognized that personal autonomy includes the right to determine one's gender identity, reinforcing transgender rights as human rights linked to privacy and personal dignity.

Jacob v. Superintendent of Police (2019)^[16]

The Delhi High Court recognized the right of transgender individuals to choose their gender identity. In this case it was highlighted that the right to gender identity is an intrinsic part of personal dignity and human rights.

Bhim Singh v. Union of India (2018)^[17]

The Supreme Court directed the government to consider creating transgender wards in prisons, recognizing the dignity and rights of transgender prisoners

Arun Kumar v. Inspector General of Registration (Madras HC, 2019)^[18]

A transgender woman was legally acknowledged as a "bride" under the Hindu Marriage Act. It was also held that prohibited invasive genital-normalizing surgery on intersex infants, except in life-threatening cases.

Chinmayee Jena v. State of Odisha (Orissa HC, 2020)^[19]

It was affirmed that the right of transgender persons to self-determination and to cohabit with any chosen partner, regardless of gender.

Karnataka Sexual Minorities Forum v. State of Karnataka (2017)^[20]

The Court removed the offensive term "eunuch" from the Karnataka Police Act, reducing implicit criminalization of transgender individuals.

Vyjayanti Vasanta Mogli v. State of Telangana (Telangana HC, 2023)^[21]

The Court invalidated the colonial-era Telangana Eunuchs Act, citing violations of Articles 14 and 21 of the Constitution of India. It was directed that the government to implement the Transgender Persons Act, 2019; extend welfare schemes like Aasara Pension; and consider vertical reservation for transgender persons.

Kesavaraj Parthibhan v. State of Andhra Pradesh (2025)^[22]:

It was quoted that NALSA to uphold transgender

¹⁵ *Justice K. S. Puttaswamy v. Union of India*, (2017) 10 SCC 1

¹⁶ *P. A. Jacob v. Superintendent of Police*, AIR 1993 KER 1

¹⁷ *Bhim Singh v. Union of India* (Crl.) No. 310 of 2005

¹⁸ *Arun Kumar v. Inspector general of Registration*, W.P. (MD) No. 4125 of 2019

¹⁹ *Chinmayee Jena v. State of Odisha*, W.P. (Crl.) No. 57 of 2020

²⁰ *Karnataka Sexual Minorities Forum v. State of Karnataka*, W.P. 1397/2015

²¹ *Vyjayanti Vasanta Mogli v. State of Telangana*, W.P. (PIL) No. 44 of 2018

²² *Kesavaraj Parthibhan v. State of Andhra Pradesh* is decided on 16th June 2025

persons' right to self-identify and reconfirmed entitlement to identity documentation and protections under the Transgender Persons (Protection of Rights) Act, 2019.

S Sushma v. Commissioner of Police (Madras HC, 2021)^[23]

The Court banned conversion therapy in Tamil Nadu by medical professionals and also urged sensitization measures across government and society to counter prejudice.

Chanchal Bhattacharya v. State of West Bengal (Calcutta HC, 2016)^[24]

The Court ruled that individuals who have undergone gender-affirming surgery have a constitutional right to recognition of their affirmed gender, including in official records.

The Transgender Rights Protection Act of 2019^[25]

Transgender Persons (Protection of Rights) Act, 2019^[26] came into force on January 10, 2020. This Act's principal goals are to guarantee the welfare of transgender individuals, defend their rights, and outlaw discrimination against them. The term "transgender person" is defined broadly in the Act to include anyone whose gender does not correspond with the gender assigned at birth. People with intersex variants, Hijras, Jogtas, Kinnars, and trans-men and trans-women (regardless of whether they have had sex reassignment surgery, hormone therapy, or laser therapy) are all included in this. The wide range of gender identities in India was meant to be covered by this comprehensive concept.

The key provision of the Act is the prohibition of discrimination against transgender persons in various sectors, including education, employment, healthcare, housing, movement, and access to public facilities and benefits. It mandates that every establishment formulate and publish an equal opportunity policy for transgender persons, detailing measures for a safe working environment, infrastructure adjustments (like unisex toilets), and non-discriminatory practices in recruitment, employment benefits, and promotion. Establishments are also required to designate a complaint officer to handle grievances from transgender individuals.

Regarding identity recognition, the Act provides for a right to self-perceived gender identity. It casts an obligation on the District Magistrate to issue a 'certificate of identity' as a transgender person based on an affidavit submitted by the applicant, without requiring any medical or physical examination. For individuals who undergo gender affirmation surgery to change their gender to male or female, the Act allows for an application for a revised certificate reflecting the change.

The Act also places obligations on appropriate governments to formulate transgender-sensitive, non-stigmatizing, and non-discriminatory welfare schemes and programs. These measures include providing medical care facilities (such as coverage for sex reassignment surgery, hormonal therapy,

and laser therapy), establishing separate HIV sero-surveillance centers, and implementing provisions for the rescue, protection, and rehabilitation of transgender persons. A significant provision is the right of transgender persons to reside with their parents and immediate family members, prohibiting separation on the ground of being transgender, except by a court order in the child's interest. Furthermore, the Act established a National Council for Transgender Persons (NCTP) to advise on policy development, monitor legislative and policy outcomes, and resolve issues pertaining to transgender persons.

The Transgender Persons (Protection of Rights) Rules, 2020/2025^[27]

To operationalize the 2019 Act, the government circulated the Draft Transgender Persons (Protection of Rights) Rules, 2020, which specify the manner and process for applying for and issuing identity certificates. These rules initially included a controversial one-year residency requirement in the District Magistrate's jurisdiction for identity certificate applications, which drew criticism. The rules also detail the procedures for changing gender and name on official documents following the issuance of a certificate.

More recently, the Delhi Transgender Persons (Protection of Rights) Rules, 2025, were notified, aiming to empower transgender individuals through inclusive governance, welfare schemes, and equal opportunity. These rules streamline the process for identity certificates based on a self-declaration affidavit without medical examination and pave the way for the formation of a Transgender Welfare Board to coordinate policy implementation and address grievances.

While the 2019 Act and its rules represent a legislative step forward, there is a significant contradiction and tension between their provisions and the more progressive NALSA judgment. The Act, despite its stated purpose of protecting rights, introduces elements that dilute the spirit of judicial pronouncements. For instance, NALSA unequivocally upheld the right to self-identification without any medical precondition. However, the Act's requirement for a District Magistrate's certificate, even if based on an affidavit, and the initial one-year residency requirement introduced bureaucratic hurdles and external validation that undermine true self-determination. This implies that legislative "progress" simultaneously introduces new limitations.

International Human Rights Framework

Human rights are universal, inalienable, and interdependent. For transgender persons whose gender identity does not align with their sex assigned at birth these rights include the freedom to self-identify, live with dignity, and participate fully in society without discrimination. Recognition of transgender rights is rooted in international human rights law, which affirms that all people, irrespective of gender identity or expression, are entitled to the same protections.

Universal Declaration of Human Rights (UDHR, 1948)

Articles 1 and 2^[28] affirm equality and non-discrimination, applicable to all individuals regardless of gender identity.

²³ *S. Sushma & Others v. Commissioner of Police*, W.P. No. 7284 of 2021

²⁴ *Chnchal Bhattacharya v. State of West Bengal*, W.P. No. 30295 of 2015

²⁵ *Ibid*

²⁶ *Ibid*

²⁷ The Transgender Persons (Protection of Rights) Rules, 2020/2025

²⁸ Universal Declaration of Human Rights, 1948, Art.1&2

International Covenant on Civil and Political Rights (ICCPR, 1966) ^[29]: Protects privacy (Article 17), freedom of expression (Article 19), and equality before the law (Article 26).

International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) ^[30]: Ensures rights to health, education, work, and adequate living standards without discrimination.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ^[31]: While focused on women, its interpretation increasingly includes transgender women in anti-discrimination obligations.

Yogyakarta Principles (2006, and 2017) ^[32]: A soft-law framework explicitly detailing the application of human rights law to issues of sexual orientation, gender identity, gender expression, and sex characteristics.

Core human rights issues faced by transgender persons Discrimination and Social Stigma

- Widespread societal prejudice leads to social exclusion, discrimination in education, employment, healthcare, and public spaces.
- Transgender individuals often face rejection from family and community, impacting their mental health and well-being.

Lack of legal protections and implementation

- Although laws like the Transgender Persons (Protection of Rights) Act, 2019 ^[33] exist, enforcement remains weak.
- Many transgender people do not have access to legal documents reflecting their gender identity, affecting their rights and opportunities.

Limited access to education and employment

- High dropout rates due to bullying and discrimination.
- Employment opportunities are scarce, leading to economic instability and increased likelihood of engaging in unsafe or illegal activities.

Healthcare Challenges

- Lack of access to gender-affirming healthcare and mental health services.
- Health facilities often lack sensitivity and awareness regarding transgender issues.

Violence and Safety Concerns:

- Transgender individuals are vulnerable to violence, harassment, and hate crimes.
- Many cases go unreported due to fear, stigma, or lack of legal support.

Housing and Shelter Issues:

- Social exclusion extends to housing, leading to homelessness among transgender populations.

- Discrimination in renting or owning property further marginalizes them.

Limited Access to Justice

- Challenges in reporting crimes or discrimination due to social stigma, lack of awareness, or insensitivity of law enforcement agencies.
- Many transgender people experience police harassment or abuse.

Violation of Privacy and Personal Dignity

- Often subjected to invasive scrutiny or forced medical examinations when trying to access official documents or facilities.

Recommendations

- **Self-Determination Principle:** Legal recognition should be based solely on self-identification, without medical or judicial requirements.
- **Comprehensive Anti-Discrimination Laws:** Explicit inclusion of gender identity and expression in national equality legislation.
- **Access to Healthcare:** Guarantee affordable, non-discriminatory gender-affirming care.
- **Awareness and Education:** Public campaigns and school programs to challenge stereotypes and promote inclusivity.
- **Data Collection:** Government collection of disaggregated data to inform policy and track progress.
- **International Cooperation:** Share best practices and align national laws with international human rights standards

Conclusion

The recognition of human rights of the transgender individuals is an urgent universal requirement in the present day. In spite of number of legal reforms regarding their rights and very steps towards equality and non-discrimination, robust anti-discrimination protection, education, healthcare as well as societal acceptance are also indispensable. India's development regarding transgender rights has been marked by various legislative actions and significant judicial decisions, from constitutional affirmation of gender identity to practical applications like marriage, identification documents and family recognition, our courts and legislation played a significant role. The NALSA judgment remains the constitutional bedrock while subsequent different laws and policies reflect evolvement of the basic rights of transgender.

Legal reform is necessary to guarantee that ambisexual individuals receive fair access to healthcare services essential for their well-being. Alongside legislative modifications, education and awareness play a vital role in fostering acceptance and understanding of ambisexual individuals. To avoid stigma and discrimination, educational institutions, workplaces, and communities must be inclusive and respectful of transgender identities. This requires training healthcare professionals, educators, and employers on ambisexual issues and how to deliver respectful and affirming care and support. However, the legislative response, primarily the Transgender Persons (Protection of

²⁹ *Ibid*

³⁰ *Ibid*

³¹ *Ibid*

³² *Ibid*

³³ *Ibid*

Rights) Act, 2019 ^[34], while a step towards formal recognition, contains significant flaws and contradictions with the very judicial principles it was meant to codify. Issues such as the bureaucratic process for identity recognition, the disparity in criminal penalties for offenses against transgender persons, and the absence of crucial civil rights like marriage and adoption, underscore a notable gap between legal intent and comprehensive human rights protection.

Consequently, despite these legal advancements, transgender persons in India continue to face pervasive human rights violations and systemic discrimination across all spheres of life. This includes alarmingly low literacy rates, widespread employment discrimination forcing many into precarious livelihoods, significant barriers to accessing comprehensive healthcare, and persistent social exclusion, violence, and family abandonment. The lack of accurate data and adequate representation further exacerbates these challenges, hindering effective policy intervention.

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